HIGH COURT OF CHHATTISGARH AT BILASPUR (27)

Writ Petition (C) No. 2469 of 2007

Petitioner Defendant No. 1	:	Devendra Kumar Alias Hemraj Singh, aged 36 years, S/o Tribhuwan Singh R/o Banaura, Tah. Distt. Raigarh.

Versus

Respondents Plaintiffs No. 1 to 6	:	1.	Bodhram S/o Karam Pal Singh, aged 42 years.
		2.	Bund Singh, 44 years, S/o Karam Pal Singh.
		3.	Savitribai, age 44 years D/o Karam Pal Singh
		4.	Satya Bhama, age 35 years D/o Karam Pal Singh
		5.	Khemabai, age 28 years, D/o Karam Pal Singh
		6.	Sudha Bai, age 26 years, D/o Karam Pal Singh
		7.	Tribhuwan Singh, age 50 years S/o Bahadur Singh (Defendant No. 2) All Resident of Village Banaura, Tahsil District Raigarh C.G.

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

Single Bench : Hon'ble Justice Shri **Satish K. Agnihotri**

Present: Mr. Upendra Bharat, Advocate for the petitioner.

ORDER

(Passed on this 23rd of April, 2007)

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 15.1.2007 (Annexure P/1), passed by the 3rd Civil Judge, Class-II, Raigarh in Civil Suit No. 18 A/2006, whereunder the application filed by the petitioner/defendant No. 1 for amendment of the written statement was rejected.

2. The case of the petitioner is that the mother of the respondents No. 1 to 6 filed a suit before the 1st Civil Judge, Class-II, Raigarh (M.P.) for declaration of title on 5.8.86 (Annexure P/4). After death of mother, Smt. Bhuribai, the legal heirs of the plaintiff, namely, respondents No. 1 to 6 were brought on record. The petitioner/defendant No. 1 filed a written statement under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC") before the 1st Civil Judge, Class-II, Raigarh for amendment in the written statement.

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3. The trial court, after hearing all the parties and considering the facts, held as under:

> "प्रतिवादी कमांक–1 ने अपने द्वारा पेश जवाबदावे से जिन तथ्यों को स्वीकार किया है उन तथ्यों को स्वीकार किया है उन तथ्यों को भी वह प्रस्तावित संशोधन के द्वारा बदलना चाहता है। जवाबदावे में वर्णित तथ्य एवं प्रस्तावित संशोशन में वर्णित तथ्य पूर्णतया भिन्न है। एक बार जवाब दावा प्रस्तुत हो जाने पर वाद पत्र में लिखे गये तथ्यों को स्वीकार करने के उपरांत उन तथ्यों को बदलने की अनुमति प्रदान करने के उपरांत उन तथ्यों को बदलने की अनुमति प्रदान नहीं की जा सकती । प्रस्तावित संशोधन से वंश वृक्ष से संबंध में की गई स्वीकारोक्ति से लेकर अन्य अभिवचनों को भी बदलने का प्रयास किया जा रहा है जिससे प्रतिवाद का स्वरूप बदलता है। अतः प्रतिवादी को वांछित संशोधन करने की अनुमति दिये जाने योग्य नही है। इसलिये प्रतिवादी कमांक–1 द्वारा पेश आवेदन पत्र अंतर्गत आदेश–6 नियत 17 व्यवहार प्रकिया संहिता निरस्त किया जाता है।"

4. I have gone through the pleadings and documents appended thereto. After hearing, learned counsel appearing for the petitioner, the finding recorded by the court below is just, proper and unexceptionable. There is no infirmity, illegality or jurisdictional error in the impugned order.

6. It is well settled principle of law that under Article 227 of the Constitution of India, this Court has jurisdiction of judicial review of the order passed by the Court below, in the event, there is manifest and apparent error on the face of the proceedings based on the clear ignorance or utter disregard to the provisions of law or there is grave failure of justice or grave injustice has occasioned thereby. Further, this Court can also entertain the petition in its supervisory jurisdiction if there is perversity, irregularity or illegality in the process of decision, not in the decision itself.

7. The writ petition is accordingly dismissed summarily.

Sd/-
Satish K. Agnihotri
Judge

B/-